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FEDERAL COMMUNICATIONS COMMISSION  
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BEFORE THE  
**FEDERAL COMMUNICATIONS COMMISSION**  
WASHINGTON, D C. 20554

In the Matter of	)	
	)	
Grandfathered Short-Spaced	)	MM Docket No. 96-120
FM Stations	)	RM-7651
	)	
Notice of Proposed Rule Making	)	DOCKET FILE COPY ORIGINAL

**RESPONSE OF ODYSSEY COMMUNICATIONS, INC.  
TO NATIONAL ASSOCIATION OF BROADCASTERS REPLY COMMENTS**

Odyssey Communications, Inc. ("Odyssey"), by its attorneys, hereby submits its Response to the Reply Comments of the National Association of Broadcasters ("NAB") submitted on October 4, 1996, in the above-captioned proceeding. 1/

In the NPRM, the Commission proposed eliminating the second- and third-adjacent-channel spacing requirements for grandfathered, short-spaced FM stations. 2/ The Comments filed in response to the NPRM provided overwhelming support for the Commission's proposal. They clearly demonstrated that elimination

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1/ Grandfathered Short-Spaced FM Stations, Notice of Proposed Rulemaking, MM Docket No. 96-120, RM-7651 (released June 14, 1996) ("NPRM"). On August 2, 1996, the Commission granted the NAB's request for a 60-day extension of time to file reply comments in this proceeding. However, it also afforded parties an additional 30 days, until November 4, 1996, to file comments addressing the NAB's reply comments. See DA 96-1222 (released August 2, 1996).

2/ NPRM at ¶¶ 8, 25.

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of these spacing requirements would give grandfathered, short-spaced FM stations the flexibility to improve service to the public, to adjust to changes in circumstances, and to compete more effectively in the marketplace. Moreover, the Comments showed that adoption of this proposal would achieve these public interest benefits without significantly increasing interference to other stations. 3/ The Comments further demonstrated that the Commission should continue to permit mutual agreements between co-channel and first-adjacent-channel stations that serve the public interest in order to promote flexibility and improve service to the public. 4/

The NAB's Reply Comments provide even further support for the Commission's proposal to eliminate the second- and third-adjacent-channel spacing requirements for grandfathered, short-spaced FM stations. First, the NAB explains that a flexible approach toward antenna siting and facility changes is necessary for stations to adjust to changes in circumstances, particularly as radio stations are forced off television towers as television stations accommodate digital television operations. 5/ Second, the NAB argues that "donut" stations, such as Odyssey's three grandfathered short-spaced stations, should be able to improve or modify their facilities for "reasons of equity," since they have been trapped by the rules at

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3/ See Reply Comments of Odyssey at 2.

4/ Id. at 2-4.

5/ Reply Comments of NAB at ii, 1, 10.

their existing sites and facilities. 6/ Third, the NAB states that relief may be provided to this limited group of stations “without creating significant new interference to the reception of other stations’ facilities.” 7/

The NAB’s Reply Comments also support rejection of the Commission’s proposal to eliminate its agreement policy. The Commission instead should permit mutual agreements between grandfathered co-channel and first-adjacent-channel stations that serve the public interest. 8/ The continued use of mutual agreements will promote the goal of flexibility articulated by the NAB. It also will promote the NAB’s goals of fairness and equity, since the Commission permits mutual agreements between two Class A stations under similar circumstances which became short-spaced as a result of the October 1989 spacing change. See 47 C.F.R. § 73.213(c).

Although the elimination of the second- and third-adjacent-channel spacing requirements would promote the NAB’s goal of flexibility and provide relief to a limited group of stations that have been unfairly trapped by the current rules without creating significant new interference, the NAB does not recommend the

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6/ Id. at 4 n.8.

7/ Id. at 9.

8/ See Reply Comments of Odyssey at 2-4. Mutual agreements also should be permitted between a Class A station and any other class FM station that became short-spaced as a result of the 1989 change in the minimum distance spacing requirements for Class A stations. See Amendment of Part 73 of the Rules to Provide for an Additional FM Station Class (Class C3) and to Increase the Maximum Transmitting Power for Class A FM Stations, Second Report and Order, 4 FCC Rcd 6375 (1989).

elimination of these requirements. Instead, it suggests that the Commission establish a rebuttable presumption in favor of the modification of grandfathered, short-spaced facilities only where these stations demonstrate one or more of the following:

1. That the modification would result in a net *decrease* in the number of listeners experiencing interference *caused* by the station proponent to the signals of other FM station;
2. That the modification would result in a net *decrease* in the land area of interference *caused* by the station proponent to the signals of other FM stations;
3. That the transmitter site shift would not be to a location near a major traffic thoroughfare -- a site move that could create massive interference to the mobile radio audience; and/or
4. That the modification of the transmitter site would be to a site within a "buffer zone" around the current transmitter site. This buffer zone would be of a size determined by the Commission -- a size perhaps based on a fixed mileage standard for all station, perhaps based on existing station class, perhaps based on the extent of existing short-spacing or perhaps based on a percentage of the service area radius of the station proponent. 9/

If the Commission eliminates the second- and third-adjacent-channel spacing requirements, the NAB argues that the Commission should condition any such grants on a subsequent review of the interference levels actually created and changed. 10/

The additional showings suggested by the NAB would impose an unnecessary burden on the Commission and on grandfathered, short-spaced

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9/ Reply Comments of NAB at 11-12.

10/ Id. at 11.

stations. Moreover, they could negate many of the public interest benefits promised by this proceeding and the goals articulated by the NAB. Many stations that would otherwise benefit from the elimination of the second- and third-adjacent-channel spacing requirements might not be able to relocate their facilities or improve service to the public if they were required to make the showings suggested by the NAB. It would be particularly difficult for many stations to make the first and second showings that a proposed modification would result in a net *decrease* in interference.

For example, if the Commission eliminates the second- and third-adjacent-channel spacing requirements, Odyssey would have the flexibility to increase the power level of station KLYY(FM), Arcadia, California, from 3 kW to 6 kW, and thus to extend 1.0 mV/m service to an additional 1,631,264 persons. This upgrade would create new *predicted* interference to some additional land in the uninhabited Angeles National Forest and to only approximately 97 people, who would in any event experience a substitution of service. 11/ This *de minimis* increase in *predicted* interference is far outweighed by the dramatic improvement in KLYY(FM)'s coverage and service to the public, yet it might prevent Odyssey from making the first and second of the NAB's suggested showings and thus, under the NAB's suggested approach, from receiving authority to implement these improvements in service.

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11/ Comments of Odyssey at 3-4.

Such an anomalous result clearly would disserve the public interest. Indeed, the NAB does not appear to have intended such a result. In its Comments and Reply Comments, it stated that there may be reasons for giving grandfathered stations new opportunities to modify facilities “in a fashion that *would not result in significant new interference.*” 12/ It further emphasized that it was interested in providing relief for trapped stations “*without creating significant new interference to the reception of other stations’ facilities.*” 13/ Yet, the NAB’s suggested showings could block many modifications that would not result in significant new interference, but also would not result in a net decrease in interference.

Accordingly, Odyssey urges the Commission not to require grandfathered, short-spaced stations to submit the unnecessary and burdensome showings suggested by the NAB. Rather, the Commission should heed the NAB’s calls for flexibility, fairness and equity and eliminate the second- and third-

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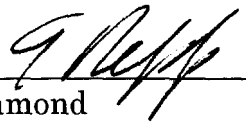
12/ Comments of NAB at 2; Reply Comments of NAB at 2.

13/ Id. at 9.

adjacent-channel spacing requirements for grandfathered, short-spaced stations,  
but continue to permit short-spaced stations to enter mutual agreements that serve  
the public interest.

Respectfully submitted,

ODYSSEY COMMUNICATIONS, INC.

By:  

Marvin J. Diamond

Marissa G. Repp

Michelle M. Shanahan

HOGAN & HARTSON L.L.P.

Columbia Square

555 Thirteenth Street, NW

Washington, DC 20004

(202) 637-5600

Its Attorneys

November 4, 1996

## CERTIFICATE OF SERVICE

I, Daphene M. Jones, a legal secretary in the law firm of Hogan & Hartson L.L.P., do hereby certify that a copy of the foregoing Response of Odyssey Communications, Inc. to National Association of Broadcasters Reply Comments was mailed, postage prepaid by first class mail, this 4th day of November 1996, to the following:

Peter Tannewald, Esq.  
Michelle A. McClure, Esq.  
Irwin Campbell & Tannewald, P.C.  
1730 Rhode Island Avenue, NW #200  
Washington, D. C. 20036-3101

Irving Gastfreund, Esq.  
Kaye, Scholer, Fierman, Hays  
and Handler, LLP  
901 15th Street, NW #1100  
Washington, D. C. 20005

Richard Zaragoza, Esq.  
Fisher, Wayland, Cooper, Leader & Zaragoza  
2001 Pennsylvania Avenue, NW #400  
Washington, D. C. 20006-1851

Robert J. Hughes, President  
Compass Radio Group  
9416 Mission Gorge Road  
Santee, CA 92017

Henry L. Baumann  
Barry D. Umansky  
National Association of Broadcasters  
1771 N Street N.W.  
Washington, D. C. 20036-



Benjamin F. Dawson, III  
Hatfield & Dawson Consulting Engineers  
4226 6th Avenue, NW  
Seattle, WA 98107

Louis R. duTreil  
duTreil, Lundin & Rackley, Inc.  
240 N. Washington Street #700  
Sarasota, FL 34236

Donald G. Everist  
Cohen, Dippell & Everist  
1300 L Street, NW #1100  
Washington, D. C. 20005

John J. Mullaney  
Mullaney Engineering, Inc.  
9049 Shady Grove Court  
Gaithersburg, MD 20877

John J. Davis, P.E.  
John J. Davis & Associates  
P. O. Box 128  
Sierra Madre, CA 91024-0128

Bayard H. Walters  
WYCQ, Inc.  
P. O. Box 150846  
Nashville, TN 37215-0846

John W. Caracciolo  
Jarad Broadcasting  
1103 Stewart Avenue  
Garden City, NY 11530

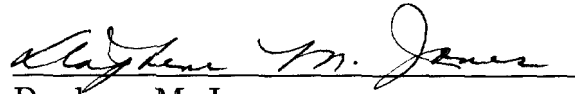
William B. Klaus  
Media-Com, Inc.  
P. O. Box 2170  
Akron, OH 44309-2170

Dennis J. Kelly, Esq.  
Cordon & Kelly  
P. O. Box 6648  
Annapolis, MD 21401

Wayne S. Reese  
E. Harold Munn, Jr. & Associates  
100 Airport Drive  
Coldwater, MI 49306

Richard Wiley, Esq.  
James R. Bays, Esq.  
Wayne D. Johnson, Esq.  
Wiley, Rein & Fielding  
1776 K Street, NW  
Washington, D. C. 20006

Eric L. Bernthel, Esq.  
Steven H. Schulman, Esq.  
Latham & Watkins  
1001 Pennsylvania Avenue, NW #1300  
Washington, D. C. 20004-2505

  
Daphene M. Jones